

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	In Proceedings
	)	Under Chapter 7
FRANK STEVENS,	)	
	)	No. BK 90-31144
Debtor(s).	)	
	)	
DONALD SAMSON, Trustee,	)	Adv. No. 91-3061
	)	
Plaintiff)	)	
	)	
vs.	)	
	)	
ELEVEN POINT CORP. and	)	
JANIS DAVIS,	)	
	)	
Defendants.	)	

OPINION

On October 9, 1991, the chapter 7 trustee filed a complaint to avoid certain transfers made by debtor, Frank Stevens, to defendants Eleven Point Corporation and Janis Davis. The first three counts are directed against Eleven Point Corporation. The fourth count alleges that debtor's transfer of certain real estate in November 1990 to Janis Davis constituted a fraudulent conveyance under section 548 of the Bankruptcy Code. Defendant Janis Davis has filed a motion for summary judgment, contending that the property in question was conveyed by Frank Stevens Enterprises, Inc. and not by the individual debtor in this case, Frank Stevens. The trustee does not deny that the deed conveying the real estate was issued by Frank Stevens Enterprises, Inc. However, the trustee argues that the corporation's charter was forfeited in January 1983, prior to the conveyance, and that by operation of law, legal title to the property passed to Frank Stevens,

the sole stockholder. According to the trustee, therefore, debtor was clearly the grantor of the real estate at the time of the conveyance in November 1990, despite the fact that the deed itself states otherwise.

Summary Judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). "The burden is on the movant to show 'that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law,' and '[a]ny doubt as to the existence of a genuine issue for trial is resolved against the moving party.'" LaScola v. US Sprint Communications, 946 F.2d 559, 563 (7th Cir. 1991) (citations omitted).

Although defendant is the party who has filed for summary judgment, in a recent response to the arguments advanced by the trustee, defendant has raised what appear to be material factual questions: (1) whether Frank Stevens was the sole stockholder of Frank Stevens Enterprises, Inc.; and (2) whether an agreement existed (apparently between the corporation and Janis Davis) to transfer the property to Davis prior to the time that the corporation's charter was forfeited. The Court clearly cannot grant summary judgment in light of these pending questions of fact.

Alternatively, the Court has serious doubts as to whether defendant could prove that she is entitled to judgment as a matter of law. It appears, from a preliminary review of the question, that under

Missouri law,<sup>1</sup> "[u]pon dissolution and payment of expenses and corporate liabilities, title to corporate assets vests automatically in the shareholders." Milgrim v. Jiffy Equipment, 247 S.W.2d 668, 676 (Mo. 1952). Defendant has failed to rebut or otherwise address the trustee's argument in this regard.

Accordingly, for the reasons stated, the motion for summary judgment filed by defendant Janis Davis is DENIED.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: November 11, 1992

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<sup>1</sup>Frank Stevens Enterprises, Inc. was a Missouri corporation.